

NORTH CAROLINA COURT OF APPEALS

JOHN DOE 1K,)	
)	
Plaintiff-Appellant,)	
)	
v.)	<u>From Mecklenburg County</u>
)	
ROMAN CATHOLIC DIOCESE OF)	
CHARLOTTE,)	
)	
Defendant-Appellee.)	

**BRIEF OF AMICUS CURIAE
THE STATE OF NORTH CAROLINA
IN SUPPORT OF PLAINTIFF-APPELLANT**

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* No outside persons or entities wrote any part of this brief or contributed any money to support the brief's preparation. See N.C. R. App. P. 28(i)(2).

ISSUE PRESENTED

The General Assembly unanimously enacted Session Law 2019-245, known as the “SAFE Child Act,” to protect children from sexual abuse, modernize the State’s sexual assault laws, and provide justice to those who have suffered from child sexual abuse in the past. Part of the SAFE Child Act temporarily revives previously expired statutes of limitations for civil suits regarding child sexual abuse. It did so based, in part, on the modern scientific understanding that child victims often suffer psychological trauma preventing them from coming forward for many years after their abuse ends.

The issue presented is:

Does the North Carolina Constitution, like the U.S. Constitution, allow the General Assembly to revive expired civil statutes of limitations to provide past victims of child sexual abuse the opportunity to seek justice?

INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”¹ Studies show that as many as 1 in 4 girls and 1 in 13 boys suffer sexual abuse in childhood.² In an effort to protect our children from such harm, the General Assembly enacted the SAFE Child Act, a state statute that ensures a civil cause of action to those who suffered from child sexual abuse in the past. This case involves a constitutional challenge to that statute.

Specifically, Defendant-Appellee challenges the General Assembly’s decision to temporarily revive expired statutes of limitations for civil claims of child sexual abuse. This revival provision reflects developments in medical science showing that victims of child sexual abuse often take many years to come to terms with the abuse that they suffered. By enacting the revival provision, the General Assembly sought to ensure that such trauma does not deprive those victims of their right to seek justice. The revival

¹ Nelson Mandela, Speech at the Launch of the Nelson Mandela Children’s Fund, Pretoria, South Africa (May 8, 1995), *available at* http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS250.

² CDC, *Preventing Child Sexual Abuse* (Apr. 30, 2021), *available at* <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html> (last accessed July 6, 2021). As discussed below, delayed and non-disclosure of child sexual abuse make these numbers difficult to determine precisely.

provision further seeks to ensure that abusers bear some of the moral and financial costs of their abuse, and to identify abusers to prevent them from harming more children.

Defendant-Appellee has defended against claims brought under the SAFE Child Act by arguing, among other things, that the revival statute violates the North Carolina Constitution's Law of the Land Clause in Article I, Section 19. This argument fails. The revival provision is constitutional because it is rationally related to a legitimate governmental interest. Moreover, Defendant's argument fails because our State's courts have recognized that statutes of limitations are procedural in nature, and that procedural rules may be retroactively amended.

For these reasons, the State of North Carolina, through Attorney General Joshua H. Stein, respectfully submits that the General Assembly did not violate the state Constitution when it passed a statute to temporarily revive child-sexual-abuse claims. The SAFE Child Act's revival provision advances the State's profound interest in vindicating such claims to help protect our State's children from child sexual abuse.

BACKGROUND

Victims of child sexual abuse suffer devastating and lifelong injuries. The CDC reports that such abuse can “affect how a person thinks, acts, and feels over a lifetime, resulting in short- and long-term physical and mental/emotional health consequences.”³ Among these effects are increased rates of physical maladies—like heart disease, obesity, and cancer—as well as broader effects, like post-traumatic stress disorder, substance abuse, risky sexual behavior, depression, and even suicide.⁴ And beyond these individual and deeply human costs, the CDC has found that child sexual abuse imposes severe economic burdens as well—on not only victims, but on society as a whole.⁵

Recent years have seen a growing understanding among medical experts and policymakers alike that victims of child sexual abuse often suffer from another consequence of their abuse: “delayed disclosure,” wherein they may take “years, often decades, before disclosing to others that they have

³ CDC, *Preventing Child Sexual Abuse*, *supra* note 2.

⁴ *Id.*; RAINN, *Children and Teens: Statistics* (undated), available at <https://www.rainn.org/statistics/children-and-teens>; see also Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 *Am. J. Preventative Medicine* 430, 430-38 (June 2005).

⁵ CDC, *Preventing Child Sexual Abuse*, *supra* note 2.

been victims of abuse.”⁶ These delays occur for a variety of reasons, including that children “often lack the knowledge needed to recognize sexual abuse, lack the ability to articulate that they’ve been abused,” or “aren’t believed when they try to disclose.”⁷ Survivors also “often experience guilt, shame, and self-blame,” and where “the sexual abuse is done by an esteemed trusted adult it may be hard for the children to view the perpetrator in a negative light, thus leaving them incapable of seeing what happened as not their fault.”⁸ “Disclosure is now generally accepted as a complex and lifelong process, with current trends showing that [child sexual abuse] disclosures are too often delayed until adulthood.”⁹ For these reasons, victims often delay reporting the offenses for years or even decades, leaving their civil claims expired under generic statutes of limitations.¹⁰

⁶ ChildUSA, *Delayed Disclosure: A Factsheet Based on Cutting-Edge Research on Child Sex Abuse* at 2 (Mar. 2020), available at <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>.

⁷ *Id.*

⁸ Melissa Hall & Joshua Hall, *The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications*, Am. Counseling Ass’n, at 2 (2011), available at https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf.

⁹ Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse Disclosures: A Research Update 2000–2016*, 20 *Trauma, Violence & Abuse* 260, 276 (2019), available at <https://journals.sagepub.com/doi/pdf/10.1177/1524838017697312>.

¹⁰ ChildUSA, *Delayed Disclosure*, *supra* note 6, at 2-3.

Indeed, delayed disclosure and non-disclosure of child sexual abuse makes it difficult to determine the full extent of this abuse. Some studies estimate that 1 in 9 girls are sexually abused in childhood, and 1 in 53 boys.¹¹ Other sources, including the CDC, estimate an even higher rate of 1 in 4 girls and 1 in 13 boys.¹² Whatever the exact rate of child sexual abuse, the literature uniformly shows that far too many children in our society face the trauma of sexual abuse, and that many victims first report that abuse many years later—after any chance at civil justice has expired.

Amidst this new understanding of delayed disclosure, the General Assembly unanimously passed the SAFE Child Act, [2019 N.C. Sess. Laws 245](#), which Governor Cooper signed into law in 2019. Among other things, the Act requires mandatory reporting for crimes against juveniles, provides training for school personnel to recognize child sexual abuse, and enumerates rights for victims of sex offenders. *Id.*, parts I, IV, and VII.

¹¹ RAINN, *Children and Teens: Statistics*, *supra* note 4 (citing David Finkelhor et al., *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 J. Adolescent Health 329, 329–33 (2014)). The Finkelhor study examines only abuse committed by *adults*, not abuse committed by other juveniles.

¹² CDC, *Preventing Child Sexual Abuse*, *supra* note 2.

In addition, the Act permanently extends the civil statute of limitations for child sex offenses, ensuring that “a plaintiff may file a civil action against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age until the plaintiff attains 28 years of age.” N.C. Gen. Stat. § 1-17(d). It also permits such a suit within two years of a defendant’s criminal conviction for a related felony. *Id.* § 1-17(e). And most significantly here, the Act—for a two-year period spanning 2020 and 2021—“revives any civil action for child sexual abuse otherwise time-barred under G.S. 1-52 as it existed immediately before the enactment of this act.” 2019 N.C. Sess. Laws 245, § 4.2(b). This revival provision authorizes, for a limited time, civil suits where the statute of limitations had previously expired.

Prior to the SAFE Child Act, there was no specific statute of limitations for claims of child sexual abuse. Rather, such claims were assessed under the standard three-year provisions for assaults and personal injuries. *See* N.C. Gen. Stat. § 1-52(5), (19) (July 2019). These standard statutes of limitation are generally tolled only until the victim reaches the age of 18. *Id.* § 1-17(a) (current). Going forward, however, victims of child sexual abuse can raise their claims until they attain 28 years of age. *Id.* § 1-17(d). The revival provision, in turn, provides an opportunity to those victimized long before

our understanding of delayed disclosure grew enough for the General Assembly to lengthen the limitations period for future cases.

The Act's revival provision recognizes the science discussed above and furthers important policy goals. It provides an opportunity for justice to those who—through no fault of their own—had not yet come to terms with their childhood sexual abuse before the limitations period expired. It helps to identify hidden child predators to prevent them from harming more children. It shifts the costs of past abuse from the victims and society to those that perpetrated the abuse. And it educates the public about child sexual abuse, in hopes of preventing future abuse.

The State respectfully submits that the North Carolina Constitution permits the General Assembly to achieve these compelling public policy interests through the revival provision. Doing so not only comports with our charter's requirement of due process but also fulfills our Constitution's fundamental commitment to providing a remedy for such terrible wrongs.¹³

¹³ North Carolina is hardly alone in seeking to achieve these important interests by reviving expired child sexual abuse claims. At least 23 states, DC, and Guam have in some form revived expired limitations periods for child sexual abuse. See ChildUSA, *Revival Laws for Child Sex Abuse Since 2002* (updated June 25, 2021), available at <https://childusa.org/wp-content/uploads/2020/05/WindowsRevival-Laws-for-CSA-Since-2002.pdf> (last accessed July 6, 2021).

ARGUMENT

I. The North Carolina Constitution Does Not Bar the State from Reviving Limitations Periods for Child Sexual Abuse Claims.

The State respectfully submits that the revival provision is constitutional under either of two complementary analyses. First, the revival provision comports with due process analysis under our Constitution's Law of the Land Clause because it is rationally related to valid state objectives—protecting children from sexual abuse and providing victims an opportunity to pursue a remedy for past harm. Second, and similarly, our courts have explained that the General Assembly may retroactively amend procedural rules relating to remedies, and statutes of limitations are precisely such procedural rules.

A. The revival provision should be assessed according to the standards of substantive due process, under which it is plainly constitutional.

Defendant has argued that the revival provision violates Article I, Section 19 of the North Carolina Constitution, specifically the Law of the Land Clause. As the North Carolina Supreme Court has explained, that clause is “synonymous with ‘due process of law’ as used in the Fourteenth Amendment to the Federal Constitution.” *Rhyne v. K-Mart Corp.*, 358 N.C.

160, 180, 594 S.E.2d 1, 15 (2004); *see also Amward Homes, Inc. v. Town of Cary*, 206 N.C. App. 38, 63-64, 698 S.E.2d 404, 422 (2010), *aff'd by an equally divided court*, 365 N.C. 305, 716 S.E.2d 849 (2011).

This link between state and federal constitutional protections should defeat Defendant's argument. The U.S. Supreme Court has squarely held that the U.S. Constitution's Due Process Clause generally permits the revival of expired civil statutes of limitations. *See Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945). This is so because statutes of limitation merely "represent a public policy about the privilege to litigate." *Id.* at 314. That is, a limitations period "has never been regarded as . . . a 'fundamental' right" protected by substantive due process." *Id.* Thus, while an individual "may, of course, have the protection of the [limitations] policy while it exists," a limitations period is merely a matter "legislative grace" that is largely subject to "legislative control." *Id.*

Thus, there can be no serious question that the revival provision is consistent with the U.S. Constitution's Due Process Clause. And under *Rhyne* and its progeny, this fact strongly indicates that the provision likewise survives scrutiny under our Constitution's Law of the Land Clause as well.

But even putting aside this federal precedent, the revival provision easily survives scrutiny under prevailing substantive due process analysis under the Law of the Land Clause. In short, substantive due process under the North Carolina Constitution, like the U.S. Constitution, examines first whether the right in question is fundamental. *See Rhyne*, 358 N.C. at 180, 594 S.E.2d at 15. It then applies the appropriate level of scrutiny based on the nature of the right. *Id.* Unless the right is fundamental, the statute need only have a rational relation to a valid state objective. *Id.* And even if the right is fundamental, the statute is not per se invalid. Instead, the statute is constitutional so long as it clears strict scrutiny. *Affordable Care, Inc. v. N.C. State Bd. of Dental Exam'rs*, 153 N.C. App. 527, 535, 571 S.E.2d 52, 59 (2002).

Here, the procedural benefit of a limitations defense falls well short of a constitutionally fundamental right. As the U.S. Supreme Court explained in *Chase*, statutes of limitations are “practical and pragmatic devices” that “represent expedients, rather than principles.” 325 U.S. at 314. They represent a “public policy about the privilege to litigate,” not “what is now called a ‘fundamental’ right.” *Id.* But even if this Court were to conclude that statutes of limitations create fundamental rights, the revival provision would survive any level of scrutiny. Protecting our children from sexual

abuse is among the State's most profound responsibilities. *See State v. Bishop*, 368 N.C. 869, 877, 787 S.E.2d 814, 819-20 (2016). The revival provision furthers this compelling interest in a targeted manner by enabling victims who suffered from delayed disclosure to seek a remedy at law. It also helps to identify perpetrators of child sexual abuse in order to eliminate further sexual abuse, and it shifts the substantial costs of the abuse from the victims and society to the abusers.

That being said, the State recognizes that there are outdated cases casting doubt on the constitutionality of reviving expired limitations periods. The principal decisions, *Whitehurst v. Dey*, 90 N.C. 542 (1884), and *Wilkes County v. Forester*, 204 N.C. 163, 167 S.E. 691 (1933), suggest an essentially per se prohibition on such revivals under a "vested rights" approach. *But see Hinton v. Hinton*, 61 N.C. 410, 415 (1868) (holding the General Assembly had the "unquestionable" power to revive expired limitations provision, as it affected only a remedy and not a property right).

The State respectfully submits, however, that these cases are not controlling because they have been superseded and clarified by intervening precedents. In particular, they preceded the modern approach to

substantive due process that is now applied by our courts. *See Affordable Care, Inc.*, 153 N.C. App. at 535, 571 S.E.2d at 59.

Even more importantly, neither case specifically rooted its analysis in the Law of the Land Clause—or any other specific provision of the North Carolina Constitution. Rather, they appear to apply an outmoded understanding of the *United States* Constitution. In *Wilkes County*, for example, our Supreme Court relied in large part on the U.S. Supreme Court’s discussion in *Campbell v. Holt*, 115 U.S. 620, 623 (1885), which theorized as potentially unconstitutional the removal of a limitations bar to recover real or personal property where the lapse of time had vested a party with title to the property. 204 N.C. at 168-70, 167 S.E. at 694-95. Such a property-based theory poses no issue with the revival of common law tort claims at issue here. After all, an individual can claim no vested property right to commit torts—especially torts arising from the sexual abuse of children. And the Supreme Court’s later analysis in *Chase*, 325 U.S. at 315-16, makes clear (as did *Campbell*) that the Fourteenth Amendment poses no bar to reviving non-property-based claims. Yet later North Carolina cases appear to elide this distinction without analysis. *See, e.g., McCrater v. Stone & Webster Eng’g Corp.*, 248 N.C. 707, 710, 104 S.E. 858, 860-61 (1958); *see also Jones v.*

Arrington, 91 N.C. 125, 130 (1884) (describing *Whitehurst* as applying the “constitution of the United States”).

Today, the settled understanding is that revival provisions comport with federal due process protections. *Chase*, 325 U.S. at 314-16. The State is aware of no North Carolina case that applies modern substantive due process analysis under our own Law of the Land Clause to conclude that reviving an expired tort statute of limitations is unconstitutional. And such a decision would be inconsistent with the now well-established principle that the words “law of the land” in Article 1, Section 19 are “synonymous with ‘due process of law’ as used in the Fourteenth Amendment to the Federal Constitution.” *Rhyne*, 358 N.C. at 180, 594 S.E.2d at 15; *cf. Canton Textile Mills, Inc. v. Lathem*, 317 S.E.2d 189, 191-93 (Ga. 1984) (overruling Georgia’s prior case law and upholding a revival provision for workers’ compensation).

For these reasons, the State respectfully submits that the revival provision is consistent with the North Carolina Constitution.

B. The revival provision is also constitutional because limitations periods are mere procedural devices relating to remedies.

The revival provision is also constitutional for a similar, but distinct, reason: The provision relates only to a procedural, remedy-focused rule—

not a substantive defense to liability. Two principles show why this is so. First, statutes of limitations are procedural in nature, rather than substantive. Second, purely procedural rules may be retroactively amended so long as the General Assembly makes clear its intent to legislate in this way.

First, as our Supreme Court has explained, “statutes of limitation are procedural, not substantive, and determine not whether an injury has occurred, but whether a party can obtain a remedy for that injury.” *Christie v. Hartley Constr., Inc.*, 367 N.C. 534, 538, 766 S.E.2d 283, 286 (2014). A statute of limitations is a plaintiff-focused period that typically begins when the claim accrues—that is, when the plaintiff is injured or becomes aware of the injury. This is so even when that date is distant from the defendant’s conduct giving rise to the claim. *See id.* As a plaintiff-focused procedural device, the purpose of a limitations provision is to “require diligent prosecution of known claims.” *Id.* (quotation marks omitted).

In this way, statutes of limitations are distinct from statutes of *repose*, which make the commencement of the claim within a certain time a “condition precedent to the maintenance of the action.” *Bolick v. Am. Barmag Corp.*, 306 N.C. 364, 369, 293 S.E.2d 415, 419 (1982). In other words,

when a statute of repose is in issue, a claim's timing is an element of the claim itself. For this reason, unlike statutes of limitations, a statute of repose serves as "an unyielding and absolute barrier" potentially preventing a plaintiff's claim before his cause of action even accrues. *Black v. Littlejohn*, 312 N.C. 626, 633, 325 S.E.2d 469, 475 (1985). Repose provisions are *defendant* focused, in that they are triggered by the defendant's actions and provide defendants with absolute repose after a set period of time. This is quite distinct from a limitations period, where the prospective defendant may be unaware of when the claim accrued, whether it was tolled, or if and when it may have expired.

A second well-established principle informs this analysis. As this Court has explained, the "General Assembly has the power to enact retroactive laws provided that they do not impair the obligation of contracts or disturb vested rights." *Speck v. Speck*, 5 N.C. App. 296, 301, 168 S.E.2d 672, 677 (1969) (question marks omitted). "There is no vested right in procedure, and therefore statutes affecting procedural matters solely may be given retroactive effect when the statutes express the legislative intent to make them retroactive." *Id.* (quotation marks omitted). Likewise, procedural matters relating only to remedies are "at all times subject to modification

and control by the legislature,” and “changes thus made may be made applicable to existing causes of action.” *Spencer v. McDowell Motor Co.*, 236 N.C. 239, 246, 72 S.E.2d 598, 604 (1952).

Combining these two principles confirms that the revival provision is constitutional. Under established precedent, statutes of limitations are purely procedural and relate only to the availability of a remedy. Their purpose is to promote “diligent prosecution” by plaintiffs. *Christie*, 367 N.C. at 538, 766 S.E.2d at 286. In enacting the revival provision, the General Assembly appropriately recognized that the standard for “diligent prosecution” must account for advances in medical knowledge showing that the psychological effects of child sexual abuse often prevent victims from coming forward sooner. *See pp 4-8, supra*. The case law confirms that this legislative goal crosses no constitutional boundaries. As they are procedural rules, the General Assembly may revive statutes of limitations retroactively, so long as it makes clear its intent to do so. There can no dispute here that the SAFE Child Act satisfies this minimal clear-statement requirement. *See* 2019 N.C. Sess. Laws 245, § 4.2(b).¹⁴

¹⁴ This Court’s decision in *Colony Hill Condominium I Ass’n v. Colony Co.*, expressly distinguished limitations periods from repose on procedural/substantive lines, rejecting

Finally, Defendant has not raised a claim under the state Constitution's Ex Post Facto Clause in Article I, Section 16—and with good reason. That prohibition applies only to criminal laws and taxes, not civil laws. This structure suggests that the General Assembly retains the flexibility to legislate retroactively in the civil arena, so long as it does so consistently with other constitutional guarantees. For all the reasons explained above, it did so here.

CONCLUSION

The SAFE Child Act reflects the modern understanding that victims of child sexual abuse suffer immense psychological harm—harm that often delays disclosure of abuse and denies victims a civil remedy under outdated procedural rules. In reviving limitations periods that would otherwise unfairly bar such claims, the SAFE Child Act violates no principle nor any clause of our Constitution.

the revival of a repose provision because it would “revive a liability already extinguished, and not merely restore a lapsed remedy.” 70 N.C. App. 390, 394, 320 S.E.2d 273, 276 (1984). The revival provision in the SAFE Child Act relates to statutes of limitation, not repose, because it “merely restore[s] a lapsed remedy.” *See id.* Regardless, as discussed above, even revival of a *repose* provision could be permissible under substantive due process analysis. *See supra* Part I.A.

The State of North Carolina, by and through Attorney General Joshua H. Stein, respectfully submits that the revival provision comports with the North Carolina Constitution.

Electronically submitted this the 6th day of July, 2021.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rule 28(j) of the North Carolina Rules of Appellate Procedure in that it is printed in 14-point and 12-point Constantia type and the body of the brief, including footnotes and citations, contains no more than 3,750 words as indicated by Microsoft Word 365.

This the 6th day of July, 2021.

/s/ Electronically Submitted

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